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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 737

PANHANDLE EASTERN PIPE LINE COMPANY,
A Corporation,
Petitioner,
vs.
FEDERAL POWER COMMISSION,
Respondent

BRIEF FOR INTERVENOR, COUNTY OF WAYNE, IN OPPOSITION FOR WRIT OF CERTIORARI

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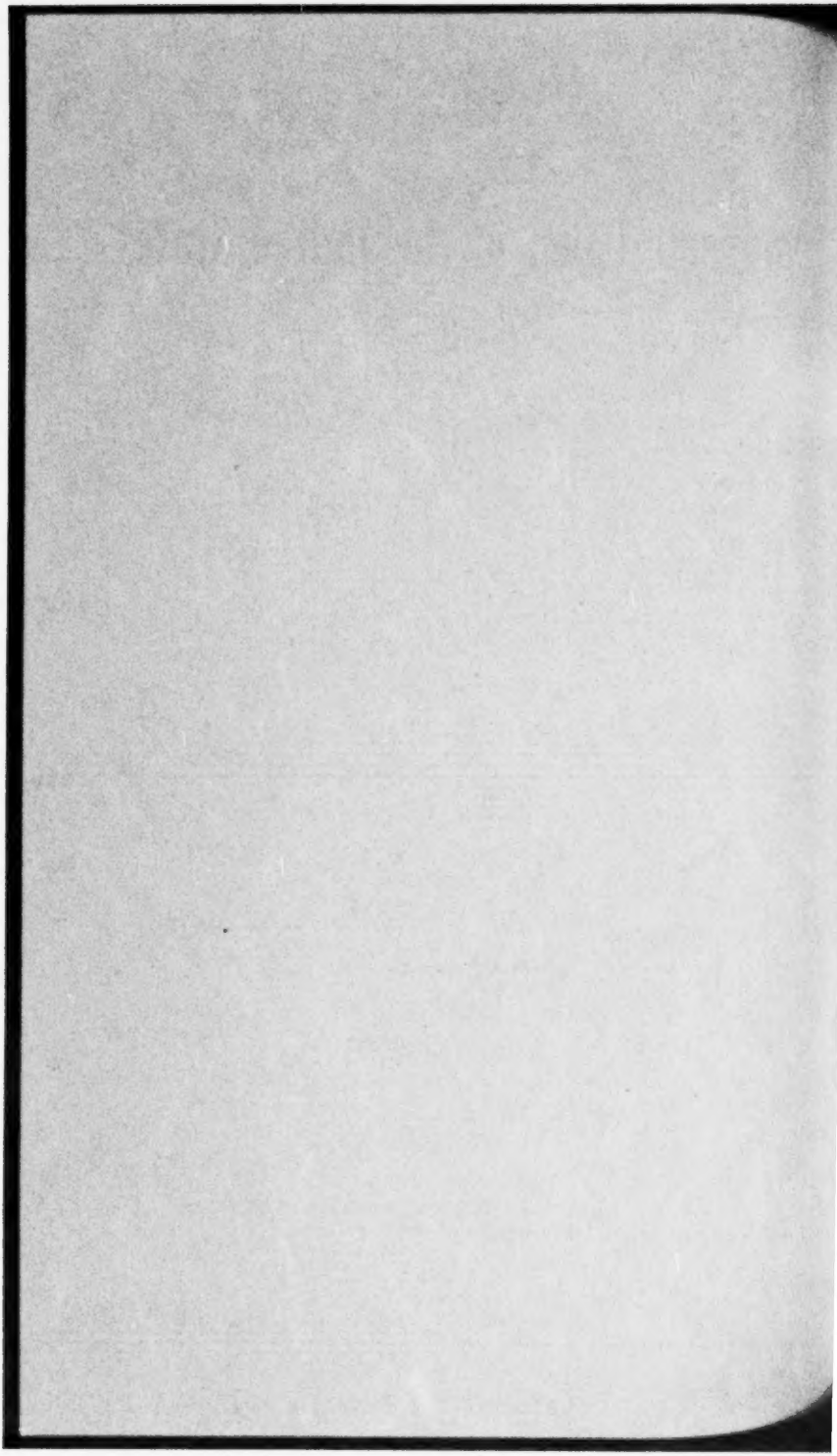

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OPINIONS BELOW

The opinion of the Court of Appeals dismissing the petition for review is reported at 219 F. 2d 729. Opinion No. 276 and accompanying order issued by the Federal Power Commission in Docket Nos. G-2306, et al. (Pet. App. 16), have not yet been reported.[1]

[1] Appendix references are to the separate appendix volume accompanying the petition for certiorari.

QUESTION PRESENTED

Whether the Court of Appeals below correctly dismissed petitioner's petition for review of an order of the Federal Power Commission authorizing the construction and operation of a new interstate pipe line project to an area in which there exists "a crying demand" for additional quantities of gas, on the ground that petitioner is not "aggrieved" within the meaning of the Natural Gas Act, where the authorized project is the only proposal to supply the required gas, petitioner is attempting to curtail its gas deliveries in the area, and petitioner has not alleged any facts to show that it will be injured by the authorized project.

STATUTE INVOLVED

Section 19(b) of the Natural Gas Act of 1938, 15 U. S. C. Sec. 717r(b), 52 Stat. 831, is set forth in Panhandle's petition (pp. 3, 4).

STATEMENT OF THE CASE

On October 1, 1954, the Commission issued an order authorizing American Louisiana Pipe Line Company to construct and operate a natural gas pipe line system from south Louisiana to Detroit, Michigan.

The American Louisiana project was the only proposal submitted to the Commission to relieve the severe gas shortage in Detroit, as well as in the other communities served by the American Natural Gas System, and this project will double the supply of gas for Detroit and the County of Wayne.

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The County of Wayne, a municipality and body politic and an intervenor in these proceedings before the Commission and the Court of Appeals below, includes within its boundaries the City of Detroit and the Detroit metropolitan area with a population in excess of 2,500,000. It embraces one of the greatest centers of industrial production in the country, if not the greatest. The products of its industries are essential to the welfare of the nation in both peace and war and the continued manufacture of such products is dependent upon an adequate supply of natural gas.

Michigan Consolidated Gas Company is the sole supplier of natural gas to the entire Detroit metropolitan area and to nearly all of the remaining portion of Wayne County.

Pursuant to directives of the Michigan Public Service Commission, restrictions have been in effect on the addition of space heating customers in Michigan by Michigan Consolidated since May, 1950, and on the sale of interruptible and large volume industrial and commercial gas since 1953.

In November, 1953, American Louisiana filed an application with the Federal Power Commission for authority to construct and operate its proposed project, which will introduce to Wayne County the additional volumes of gas so vitally required by its residents and industries.

Panhandle intervened in the proceedings before the Commission and succeeded in prolonging the hearings for months through dilatory tactics. Panhandle, however, offered no competitive proposal to bring additional gas to Wayne County or to any other market area sought to be served by American Louisiana gas.

In fact, Panhandle at the present time is vigorously pressing its application before the Commission to *reduce* its deliveries to Wayne County by 30%. This attempted abandonment was denied once by the Commission, but upon Panhandle's appeal to the Court of Appeals for the Third Circuit it was remanded to the Commission because of its interrelation to the question of the allocation of Panhandle's gas supply. *Panhandle v. F. P. C.*, 204 F. 2d 925.

After the Commission denied Panhandle's request for a rehearing of the order issuing a certificate of public convenience and necessity to American Louisiana, Panhandle petitioned the Court of Appeals for the Third Circuit for review of the Commission's order. The petition for review was dismissed by the Court of Appeals below upon motions of the Commission, Wayne County, American Louisiana and other interested parties on the ground that Panhandle had not alleged facts to show that it is legally "aggrieved" by the Commission's order within the meaning of Section 19(b) of the Natural Gas Act. Panhandle's request for rehearing on this dismissal was denied.

ARGUMENT

Although numerous parties, including all the state and municipal regulatory bodies charged with the duty of protecting the interests of the gas consuming public in the market areas proposed to be served with additional natural gas by the American Louisiana project, intervened and participated in the proceedings before the Commission, Panhandle alone has filed a petition for review of the Commission's order authorizing the project.

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Only Panhandle, twice condemned by this Court[2] for endeavoring to skim the cream from the natural gas business by attempting to channel its supply of gas into unregulated direct sales to industry, is now before this Court seeking a writ of certiorari.

Here we have the situation of a petitioner, who has been found by the Commission administering the Natural Gas Act and the Court below not to be "aggrieved" within the meaning of that Act, availing itself of a judicial review to which it is not entitled in order to further harass and delay a project which the public interest requires and demands.

There can be no disputing the fact that there is a "crying demand"[3] for additional gas in the areas, including Wayne County, proposed to be served by the American Louisiana project. The restrictions upon additional residential and industrial gas sales imposed pursuant to orders of the Michigan Public Service Commission[4] dating back to 1950 speak for themselves.

Panhandle has blandly announced to this Court that it "does not wish to serve"[5] these market areas with the additional volumes of gas which they seek so urgently.

Panhandle, furthermore, concedes that it is actually endeavoring to *curtail its present deliveries* of gas to Wayne County from 125,000 Mcf to 87,500 Mcf per day.[6]

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[2] *Panhandle Eastern Pipe Line Company v. P. S. C. of Indiana*, 332 U. S. 507; *Panhandle v. Michigan P. S. C.*, 341 U. S. 329.

[3] Pet. App. 29.

[4] Pet. App. 18.

[5] Pet. 19.

[6] Pet. 10, fn 3.

Thus, Panhandle not only refuses to supply the potential consumers of natural gas but, in addition, Panhandle refuses adequately to serve the *existing* consumers.

Wayne County has for many years participated in proceedings before the Commission and the courts in the interest of the public it represents involving the efforts of the American Natural Gas Company to bring adequate quantities of natural gas to these areas and the attempts of Panhandle to block this program.

The American Natural Gas Company built the Michigan Wisconsin Pipe Line Company system some five years ago in order to meet the rapidly expanding gas needs of these areas and Panhandle unsuccessfully attempted to review and set aside the Commission's action authorizing that project, *Panhandle Eastern Pipe Line Co. v. Federal Power Commission* (C. A. D. C.), 169 F. 2d 881, cert. den. 335 U. S. 854.

Panhandle's own expansion programs have resulted in the consumers of Wayne County subsidizing Panhandle's increased capacity through the collection of a rolled in rate notwithstanding the fact that not one additional cubic foot of such increased capacity was made available to Wayne County.

In the instant proceedings Panhandle has consistently sought to nullify the only actual endeavor to alleviate our severe gas shortage. If this project fails because of Panhandle's selfish determination, the consumers of Wayne County will be relegated to the hopeless position in which they found themselves prior to the filing with the Commission of the American Louisiana application. No other company has indicated any intention of undertaking a venture to bring additional supplies of gas to Wayne County and the other gas starved market areas of the

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American Natural Gas system. On the basis of the events in the instant case anyone contemplating such an undertaking would be faced with years of negotiating and planning, and assuming it were successful in this regard another year of hearings, many months of court appeals and an additional eighteen months construction period before its proposal could bear fruit.

The Court of Appeals below clearly committed no legal error in dismissing Panhandle's petition for review.

The decisions of the Court below, other Circuit Courts of Appeals and this Court are uniform in requiring a party seeking review of an administrative order on the ground that it is "aggrieved" to present *facts* which show that such party will suffer direct, immediate and substantial economic loss.[7]

The Court of Appeals below was entirely correct in its statement of the law that the "naked assertion is not enough" and in its holding that Panhandle had not in its petition for review set forth the requisite facts to support its claim of aggrievement.[8]

Wayne County earnestly submits to this Court that Panhandle has not only failed to allege facts to show that it will suffer injury as a consequence of the Commission's order, but, furthermore, that there is nothing Panhandle

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[7] *Interstate Electric v. Federal Power Commission*, 164 F. 2d 485 (C. A. 9, 1947); *United States Cane Sugar Refiners' Ass'n. v. McNutt*, 138 F. 2d 116 (C. A. 2, 1943); *Pittsburgh Radio Supply House v. Federal Communications Commission*, 98 F. 2d 303 (C. A. D. C., 1938); *National Coal Ass'n. v. Federal Power Commission*, 191 F. 2d 462 (C. A. D. C., 1951); *National Broadcasting Co. v. Federal Communications Commission*, 132 F. 2d 545 (C. A. D. C., 1942, affirmed 319 U. S. 238, 1943); *Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U. S. 470.

[8] Pet. App. 57.

could have said which would have permitted a finding of direct and immediate injury.

Finally, Wayne County is concerned solely with the interest of the public which it represents in these proceedings. In all other respects it is a disinterested party. The additional volumes of natural gas that the American Louisiana project will provide are indispensable not only to the health and well-being of the residential consumers in this area but also to its industry which must have this gas if it is to discharge its heavy responsibilities to the country from the standpoint of the general economy and national defense. Accordingly, Wayne County respectfully requests this Court to deny promptly "Panhandle's" petition, which is wholly lacking in merit and thereby expedite the realization of a project of vital concern not only to Wayne County but to the nation.

CONCLUSION

The finding of the Court of Appeals below that Panhandle's petition for review of the order of the Federal Power Commission granting a certificate of public convenience and necessity to American Louisiana Pipe Line Company did not contain any allegations of fact to support Panhandle's claim that it is "aggrieved" by such order within the meaning of Section 19(b) of the Natural Gas Act is without error and is consistent with the decisions of the various United States Courts of Appeals and of this Court.

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Wherefore, Wayne County prays that Panhandle's petition for writ of certiorari to the United States Court of Appeals for the Third Circuit to review its judgment be denied.

Respectfully submitted,

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